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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 120

EX PARTE, IN THE MATTER OF THE PETITION OF THE BALTIMORE COUNTY WELFARE BOARD, A MUNICIPAL AGENCY, FOR GUARDIANSHIP WITH RIGHT TO ADOPTION OF A MINOR.

ANTHONY F. PALMISANO,
LYDIA MAE PALMISANO,
MADONNA AGATHA HALE,

Petitioners,

vs.

BALTIMORE COUNTY WELFARE BOARD,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of Maryland.

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Petition for Writ of Certiorari to the Court of Appeals of Maryland

Anthony F. Palmisano, Lydia Mae Palmisano and Madonna Agatha Hale respectfully pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in this cause on February 23, 1968.

Opinion Below.

The opinion rendered by the Court of Appeals of Maryland on February 23, 1968, affirming the judgment of the Circuit Court of Baltimore County, Maryland refusing to set aside an order appointing the Respondent as guardian of the infant child Madonna Peggy Hale and granting Respondent the right to consent for adoption is reported at 238 A2d (Md.) 251.

Jurisdiction

The judgment of the Court of Appeals of Maryland was entered on February 23, 1968 (Appendix A herein).

The jurisdiction of this Court is invoked under 28 U.S.C., 1257(3) in that the Maryland Courts in upholding the validity of the Maryland Statute, Article 16, Section 74 have held that an infant under the age of 18 may consent to the appointment of a guardian of her child with consent to adopt without due notice to the natural parents of said infant, and under the same section, that the Maryland Courts in upholding Rule D–75 (a) of the Maryland Rules of Procedure have held that a guardian *ad litem* supercedes the natural guardianship of the natural parents of the minor mother whether said natural parents are fit or not, and under the same section because Petitioners were deprived of certain rights without due process of law, contrary to the Constitution of the United States.

Questions Presented.

1. Whether due process of law requires notice to the parents and natural guardians of a minor mother living with said parents before the minor mother can consent to the appointment of a legal guardian with the right to consent to the adoption of her illegitimate child.

2. Whether a state statute, as construed by the state courts, which allows a guardian *ad litem* for a minor mother to supercede the rights of natural parents and guardians without a determination that the natural parents and guardians are unfit, is repugnant to due process of law.

Constitutional and Statutory Provisions Involved.

The constitutional provision involved in the due process clause of the Fourteenth Amendment to the Constitution of the United States.

The state's statutes involved are Article 16, Section 74 (h) of the Annotated Code of Maryland, 1957 edition, as amended, which states on page 88 of the 1966 replacement volume as follows:

> "Minority of a natural parent shall not place such parent under a disability in adoption or guardianship with the right to consent to adoption proceedings and such parent, if he has attained the age of eighteen (18) years, may give a valid consent to adoption or guardianship with the right to consent to adoption and/or join as a party in such proceedings and shall be considered *sui juris* and no adoption or guardianship with right to consent to adoption shall be invalidated because of the minority of a natural parent."

Together with Rule D–75 (a) of the Maryland Rules of Procedure as cited in the Annotated Code of Maryland, 1957 edition, volume 9B, at page 382 of the 1963 replacement volume which states:

> "a. *Parent under disability–guardian ad litem.*
>
> If a parent whose child is to be adopted, or for whom a guardian with the right to consent to adoption is to be appointed, is a person under disability, the court shall appoint a guardian *ad litem* for such period after services of the show cause order as required by Rule D–74 (Notice). The guardian *ad litem* shall be a member of the bar, or other responsible and disinterested person, who shall investigate the facts of the case and report his findings to the court in writing; if such parent has consented to the proceedings, it shall only be necessary for the guardian to investigate and report to the court whether such parent understands the legal effect of the proceeding and consents thereto."

Statement of the Case.

Your co-petitioner, Madonna Agatha Hale was born Madonna Agatha Palmisano on March 26, 1947. On May 28, 1964, when your co-petitioner was seventeen years of age, she gave birth to an illegitimate child, Madonna Peggy Hale, in Harford Memorial Hospital, Havre de Grace, Maryland. At the time of the birth of the child, your co-petitioner, Madonna Agatha Hale, withheld knowledge of the birth of her illegitimate child from her parents, your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, with whom she had been living since childhood. It is admitted that the grandparents, your co-petitioners, knew nothing of the birth of the illegitimate child until December 15, 1965, long after the acts herein complained of had been perpetrated.

On July 13, 1964, your co-petitioner, Madonna Agatha Hale, signed a release of parental rights to the Baltimore County Welfare Board without the knowledge and consent of her natural parents and guardians, your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano. Ex parte proceedings were instituted by the Welfare Board of Baltimore County, Maryland on September 10, 1964 in the Circuit Court for that county, in which the board asked to be named as the legal guardian of the child with the right to consent to its adoption and asked that guardian *ad litem* be appointed for your co-petitioner, Madonna Agatha Hale.

On the same day, the Circuit Court of Baltimore County appointed John B. Farrell, a probation officer of Baltimore County, as guardian *ad litem.* Also, on the same day, the Circuit Court of Baltimore County issued an order directing your petitioners to show cause on or before October 15, 1964 why the *adoption* should not be decreed. Still on the same day, the appointed guardian *ad litem,* interviewed your

co-petitioner, Madonna Agatha Hale, once, for a period of twenty minutes during most of which time, the Welfare Board worker, Mrs. Genevieve Parlett, was present.

That afternoon, Mr. Farrell as guardian *ad litem* filed his answer to the show cause order, reciting that he had advised your co-petitioner, Madonna Agatha Hale, of her rights concerning the relinquishing of her child for adoption and the finality of her decision once an adoption decree had been signed.

He did not tell the petitioner that she had until October 15, 1964 to object to the appointment of the welfare board as guardian; did not tell her that her parental rights cease when a guardian is appointed; did not tell her that after appointment, the guardian alone has the right to consent to the child's adoption, and did not tell her that she would not be allowed to see her child after the decree appointing a guardian was signed.

A decree was entered on October 20, 1964, appointing the Baltimore County Welfare Board legal guardian with the right to consent to the adoption of the illegitimate child. No notice of the petition for guardianship or the appointment of John B. Farrell as guardian *ad litem* was ever served on your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano. On December 15, 1965, your co-petitioner, Madonna Agatha Hale, now eighteen years of age, filed in the Circuit Court of Baltimore County, together with your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, a motion to strike the order of October 20, 1964 appointing the Baltimore County Welfare Board as guardian. After hearing, the motion was denied, upon which your petitioners appealed to the Court of Appeals of Maryland. That honorable court, after argument, sustained the ruling of the Circuit Court of Baltimore County.

Your petitioners seek the issuance of a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

How Federal Questions Are Presented.

In your petitioners' initial motion to strike the order of October 20, 1964, appointing the Baltimore County Welfare Board legal guardian with the right to consent to adoption of the minor child of your co-petitioner, Madonna Agatha Hale, filed on December 15, 1965 in the Circuit Court for Baltimore County, your petitioners stated in Paragraph III, "that on the 13th day of July, 1964, a release of the parental rights was secured from Madonna Agatha Hale, by the Baltimore County Welfare Board through one of its functionaries, Genevieve W. Parlett, which release was subsequently filed herein as an exhibit for authority to obtain legal guardianship with right to consent to adoption. . . .and that such release of parental right is invalid and nugatory and was and is hereby revoked and repudiated by petitioners herein," and further stated in Paragraph IV, ". . .that the appointment of the guardian *ad litem* was in violation of Article 72A, Section 1, which states that a guardian *ad litem* may be appointed for a minor child only where the *parents are unsuitable*, or the child's interests would be adversely affected by remaining under the natural guardianship of its parent or parents; for in this case no investigation was made or hearing held to determine whether they were in fact unsuitable, or that the child's interests would be adversely affected," and further, in Paragraph VII, "that the Petition for Legal Guardianship with the right to consent to adoption filed herein is invalid and nugatory:. . .(c) For that no valid consent to a legal guardian with right to consent to adoption was given by Madonna Agatha Hale who at the time of the filing of the petition for legal guardianship with right to consent to adoption had not attained the age of eighteen years as required under Article 16, Section 74, of the Annotated

Code of Maryland. (1) For that your petitioners, Anthony F. Palmisano and Lydia Mae Palmisano were at all times available to process but were denied their parental rights and duties to comfort and guide their minor daughter, Madonna Agatha Hale, in an hour of her greatest need, in violation of their constitutional rights and of due process of law, And further, in Paragraph VIII, "That your petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, although being the natural parents and guardians of the aforesaid, Madonna Agatha Hale, and necessary and essential parties to these proceedings were willfully kept in ignorance of the sequence of events, and immediately upon discovering the facts, requested and authorized their attorneys, Edward Angeletti and Louis Peregoff, to file this Motion on behalf of themselves and their daughter, Madonna Agatha Hale."

The trial court failed to rule on any of the issues raised by the petitioners as to the constitutional questions presented in their motion to strike and based its final decree solely on whether your petitioners had produced clear and convincing proof that the consent signed on July 13, 1964 by Madonna Agatha Hale was invalid and legally ineffective and whether the petitioners produced clear and convincing proof that she did not understand the legal affect of this proceeding (Appendix B). But the court did not reach beyond the determination of these factual questions.

That your petitioners preserved the constitutional questions in a brief filed by your petitioners in the Court of Appeals of Maryland specifically referring, under the second question thereof, as to whether a minor mother, as herein, could legally sign a consent for adoption placement without approval of her natural parents and guardians, your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano.

The Maryland Court of Appeals failed to rule specifically on the constitutional questions as presented by your petitioners but construed the statutes herein concerned to mean, and interpreted them so as not to require that notice must be given to the natural parents and guardians of the minor mother, despite the fact that there was no showing that said parents of the minor mother are unfit.

Reasons for Granting the Writ.

1. CO-PETITIONER, MADONNA AGATHA HALE, A MINOR, WAS DEPRIVED OF DUE PROCESS OF LAW WHEN THE CIRCUIT COURT OF BALTIMORE COUNTY APPOINTED THE BALTIMORE COUNTY WELFARE BOARD AS THE LEGAL GUARDIAN OF HER ILLEGITIMATE CHILD WITH THE RIGHT TO CONSENT TO ITS ADOPTION WITHOUT THE KNOWLEDGE AND CONSENT OF HER NATURAL PARENTS AND WITHOUT ANY NOTICE TO THEM OF THE PROCEEDINGS, AND ALTHOUGH CO-PETITIONER, MADONNA AGATHA HALE, HAD SINCE HER BIRTH LIVED WITH AND HAD BEEN SUPPORTED AND MAINTAINED BY HER NATURAL PARENTS.

The legislative policy of the State of Maryland regarding the relationship of parent and child is clearly set forth in the *Annotated Code of Maryland (1957), Article 72A, paragraph 1,* as follows:

> "The father and mother are the joint natural guardians of their minor child and are jointly and severally charged with its support, care, nurture, welfare and education. They shall have equal powers and duties, and neither parent has any right superior to the right of the other concerning the child's custody. If either the father or mother dies, or abandons his or her family, or is incapable of acting, the guardianship devolves upon the other parent. Where the parents live apart, the court may award the guardianship of the child to either of them. Provided: The provisions of this article shall not be deemed to affect the existing law relative to the appointment of a third person as

> guardian of the person of the minor where the parents are unsuitable, or the child's interests would be adversely affected by remaining under the natural guardianship of its parent or parents."

The right to function as *parens patriae* is not an invitation to procedural arbitrariness or to deny due process of law. See *Kent v. U.S., 383 U.S. 541, 16 L. Ed 2d. 84.*

Before depriving the child-mother of her legal right to the guidance, protection and counsel of her parents with whom she had at all times lived, appropriate notice should have been served upon her parents informing them of the proceedings.

In *Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306,* the Supreme Court reminded us of the rule of due process, stating that for judicial finality, notice must be given which is, "reasonably calculated under all the circumstances, to apprise interested parties of the action and afford them an opportunity to present their objections."

The Maryland Courts herein have failed to observe the most fundamental requirements of due process, for as Mr. Justice Fortas stated in *In Re Gault, 387 U.S. 1:*

> "Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the power which the State may exercise . . .
>
> "Due process of law requires notice of the sort we have described—that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice in advance of the hearing of the specific issues they must meet. Nor, in the circumstances of this case can it reasonably be said that the requirement of notice was waived."

See also *Armstrong v. Manzo,* infra.

To further quote Mr. Justice Fortas,

> "In *Kent v. U.S.*, supra, we stated that the Juvenile Court judges' exercise of the power of the State as *parens patriae* was not unlimited. We said that the admonition to function in a parental relationship is not an invitation to procedural arbitrariness."

There is no place in our system of law for reaching a result of such tremendous consequences by means of the star chamber proceedings herein, proceedings which lack the essentials of due process and fair treatment. See *Kent v. U.S., supra.*

The Fourteenth Amendment's concept of substantive due process protects the parent-child relationship from unwarranted governmental intrusion. See *Meyer v. State of Nebraska, 262 U.S. 390, 67 L. Ed 1042, 1045; Pierce v. Society of the Sisters, 268 U.S. 510, 534-535, 69 L. Ed 1070, 1078; Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 168, 88 L Ed. 645, 652; Lacher v. Venus, 177 Wis. 558, 188 N.W. 613, 617.* The Amendment is also construed to protect the right of a natural parent to procedural due process where the custody or adoption of its child is being litigated. See *May v. Anderson, 345 U.S. 528, 533, 534, 97 L Ed 1221, 1226-1227; Armstrong v. Manzo, 380 U.S. 545, 550, 551, 14 L. Ed. 2d. 62, 66.*

The words of Mr. Justice Stewart, in his dissenting opinion on other grounds in *In re Gault, supra,* are noteworthy:

> "Similarly, due process clearly requires timely notice of the purpose and scope of any proceedings affecting the relationship of parent and child. *Armstrong v. Manzo, 380 U.S. 545, 85 S. Ct. 1187, 14 L Ed. 2d 62."*

Mr. Daniel Webster once said, "The most important thought I ever had was my responsibility to God."

We are given the choice between good and evil. Would God have snatched this baby, Madonna, from the bosom of her family under the circumstances of this case? From a distraught 17-year old mother, for whom the trial court herein lacked the compassion and understanding to consult with her natural parent and guardian who had nurtured her since birth? From her natural grandparents who were completely unaware of her existance? From those same natural grandparents who immediately upon being informed of the heartbreak of their daughter instituted these proceedings on her behalf and on behalf of themselves?

The questions answer themselves!

Judge Finan, speaking for the Court of Appeals of Maryland refers to the child-mother as one who, "in desperation" surrendered her child for adoption to a public agency, yet paradoxically enough concludes his opinion with the statement that the child-mother, "knowingly and intelligently consented to the adoption."

Counsel notes for this August Tribunal's attention that no "adoption" proceedings are involved herein but only a petition to strike down a decree for the appointment of a legal guardian for an infant with the right to consent to its adoption.

The Court of Appeals of Maryland divests itself of any responsibility toward the child-mother's natural parents and blandly ignores their natural and human right to have guided and counseled their daughter.

The decision of the Court of Appeals of Maryland on the face of its opinion not only violated Petitioners' right of due process of law under the Fourteenth Amendment of the Constitution of the United States, but it violates every law of God and Man!

Your co-petitioners, Anthony F. Palmisano and Lydia Mae Palmisano, were at all times available to process but were denied their rights and duties to comfort and guide their minor daughter in the hour of her greatest need, in violation of their and their daughter's Constitutional rights and due process of law.

Your petitioner should have been given a voice in these proceedings of which they were purposefully kept in ignorance.

Counsel submits that the Maryland court had no moral or legal grounds on which to base its ultimate decision to terminate and extinguish the infant baby's relationship with her natural family.

Counsel prays that this August Tribunal will adopt and apply to this case the blessed words, written with synoptic genius, of Mr. Justice Fortas in *In Re Gault, supra,* and return the baby, Madonna, to her natural mother and grandparents.

2. THE APPOINTMENT OF A GUARDIAN *AD LITEM* HEREIN WAS REPUGNANT TO DUE PROCESS OF LAW IN THAT SUCH APPOINTMENT WAS MADE TO SUPERCEDE THE RIGHTS OF THE NATURAL PARENTS AND GUARDIANS WITHOUT DETERMINING THAT THE NATURAL PARENTS AND GUARDIANS WERE UNFIT.

The Court of Appeals of Maryland in its opinion, herein, states:

> "The Maryland adoption laws do not require the knowledge of the mother's natural guardians, and in fact indicated that the court may appoint a guardian to protect the mother."

Such a violent and disruptive construction of the law is in complete derogation of the rights of a natural parent as to his minor children as established by this same court of Appeals as far back in Maryland as the case of *Helicus v. Franciscus, 2 Bland (Md.) 544,* where the court stated:

> "The relationship of parent and child is sacred and inviolable in its nature . . . The father is the rightful and legal guardian of all his infant children; and in general, no court can take from him the custody and control of them, thrown upon him by the law, not for his gratification, but on account of his duties . . ."

And the provision of Maryland Rule D75a (set forth in the opinion of the Court) that a guardian *ad litem* other than the natural parent and guardian may be appointed for a person under disability is in violation of the Due Process clause of the Fourteenth Amendment where it made no provision for service of process on such natural parent and guardian.

Werner on the Law of Guardianship, at Section 31, states:

> "That no guardian can be appointed of the person of an infant having mother or father living not declared unsuitable by a court of competent jurisdiction. . . and it is a fraud on the rights of a father to obtain guardianship of his child without his knowledge . . . ."

The law of Maryland long has recognized this basic right of natural parents as guardians in all matters concerning their infant children both through statute and through judicial interpretation. In the case of *Redman v. Chance, 32 Md. 42,* the Court of Appeals of Maryland stated,

> "In thus recognizing the common law right of the parent to the guardianship of the child, the Legislature was careful to guard against the appointment of any other person except upon notice to the father or mother, if living, and a strict compliance with this provision of the statute, was, therefore, made a condition precedent to the exercise of the power conferred. Such, indeed, are the important and delicate duties of a trust of this character, and so close and intimate, ought to be the relations between the guardian and the ward, that it was obviously

> the purpose of the framers of the law to prevent, except under extraordinary circumstances, the *intrusion* of a stranger between the parent and the child. . . ." (Italics supplied by the Court)

No other answer can be given than that a statute divesting a natural parent and guardian of the custody of his minor daughter is a denial of due process of law – a proposition which Maryland itself has recognized for at least a hundred years.

As Mr. Justice Jackson pointed out in *Mullane v. Central Hanover, 339 U.S. 306;*

> "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."

What more appropriate case for the application of Mr. Justice Jackson's words than this, where a child was so "untimely ripped" from its greatest treasure, its natural mother and natural grandparents?

3. THE SPECIFIC QUESTION HAS NOT BEEN PRESENTED TO THIS COURT BEFORE.

The Petitioners have been unable to discover a previous case in this Court dealing precisely with the questions brought before the Court by them. The closest in point are the cases of *In re Gault, Armstrong v. Manzo, and Mullane v. Central,* all cited, supra.

Conclusion.

For the foregoing reasons, it is respectfully requested that this petition for Writ of Certiorari be granted.

Respectfully submitted,

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